

**UNITED STATES DISTRICT COURT**

## DISTRICT OF NEVADA

ARTHUR LEE GARRISON

Plaintiff

V.

NEVADA DEPARTMENT OF  
CORRECTIONS, et. al.,

## Defendants

Case No.: 3:17-cv-00391-MMD-WGC

## Report & Recommendation of United States Magistrate Judge

Re: ECF No. 148

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

Before the court is Defendants' Motion to Dismiss Unserved Defendant. (ECF No. 148.) Plaintiff filed a response. (ECF No. 150.) No reply was filed.

After a thorough review, it is recommended that the motion be denied as moot.

## I. DISCUSSION

Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC), proceeding pro se with this action pursuant to 42 U.S.C. § 1983. (Fourth Am. Compl., ECF No. 129.)

Plaintiff was allowed to proceed with claims for retaliation and Eighth Amendment deliberate indifference to serious medical needs in his Fourth Amended Complaint. (ECF No. 128.) He was allowed to proceed against Guy Brown, Julie Matousek, Stoke, Neven, Dr. Michael Koehn, A. Gregerson, Melissa Mitchell, Dr. Schlauger, Dr. Romeo Aranas, Dr. Scott Monthei, Russell Perry, and Smith. (*Id.*)

1 On March 16, 2020, the Attorney General's Office accepted service for Dr. Aranas, Guy  
2 Brown, Julie Matousek, Melissa Mitchell, Dwight Neven, and Perry Russell. (ECF No. 132.)  
3 Service was not accepted for Dr. Koehn, who was a former employee. Service was also not  
4 accepted for A. Gregerson, Scott Monthei, Dr. Schlauger, Smith or Stoke as they were not  
5 identified as current or former NDOC employees. (ECF No. 132.)

6 On March 17, 2020, the court issued an order that a summons be issued for Dr. Koehn  
7 and it be delivered to the U.S. Marshal with the address provided under seal for service, and a  
8 USM-285 form was sent to Plaintiff. The court gave Plaintiff until April 17, 2020, to forward the  
9 USM-285 form to the U.S. Marshal. (ECF No. 135.) The summons was issued that day. (ECF  
10 No. 136.)

11 On May 4, 2020, Defendants filed this motion to dismiss Dr. Michael Koehn under  
12 Federal Rule of Civil Procedure 4(m) as he had not yet been served. (ECF No. 148.) Plaintiff  
13 filed his response to the motion to dismiss on May 12, 2020. (ECF No. 150.)

14 On May 18, 2020, the summons was returned executed, showing that Dr. Michael Koehn  
15 had been served by the U.S. Marshal on April 28, 2020. (ECF No. 152.) On May 19, 2020, a  
16 joinder to the answer was filed by Dr. Michael Koehn. (ECF No. 153.)

17 Since Dr. Koehn has now been served and has filed a joinder to the answer, the motion to  
18 dismiss Dr. Koehn for lack of service should be denied as moot.<sup>1</sup>

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22 <sup>1</sup> Defendants never filed a reply in support of their motion. It seems that the motion to dismiss  
23 Dr. Koehn should have been withdrawn following the acceptance of service and filing the  
joinder to the answer on his behalf, which would have obviated the need for this Report and  
Recommendation.

**II. RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the District Judge enter an order **DENYING** the motion to dismiss Dr. Koehn for lack of service (ECF No. 148) as moot.

The parties should be aware of the following:

1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to this Report and Recommendation within fourteen days of being served with a copy of the Report and Recommendation. These objections should be titled “Objections to Magistrate Judge’s Report and Recommendation” and should be accompanied by points and authorities for consideration by the district judge.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court.

Dated: November 12, 2020



William G. Cobb  
United States Magistrate Judge